CRM No. 25447-M of 2005

Mandeep Arora and others vs. State of Punjab and another

CRR No.2221 of 2005

Mandeep Arora and others vs. State of Punjab and another

Present: Mr.G.S.Sandhawalia, Advocate for
the petitioners.

Mr.M.C.Berry, Sr.DAG, Punjab.

Mr.Deepak Arora, Advocate for respondent No.2.

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This order will dispose of CRM No. 25447-M of 2005 and CRR No.2221 of 2005.

The petitioners filed these petitions seeking quashing of complaint dated 5.6.2003 and all subsequent proceedings including the summoning order dated 14.6.2003 passed by Judicial Magistrate Ist Class, Jalandhar and so also the order dated 6.8.2004 dismissing the revision filed by the petitioners by Sessions Judge Jalandhar. The petitioners have further impugned order framing charge dated 19.4.2005 passed by the Additional Sessions Judge (Fast Track Court Jalandhar) being an abuse of process of Court etc.

The main grievance appears to be that the petitioners are facing prosecution in FIR No. 28 dated 13.3.2003. After registration of the case, respondent No.2 also filed a complaint case for adding an offence under Section 307 IPC. On the basis of this complaint the petitioners were summoned and the charge is framed against them.

The present petition was filed urging that allegations as stated in the FIR are the same by and large as are made in the complaint. The primary submission made by counsel for the petitioners is that they cannot be subjected to face prosecution arising out of the same occurrence and on the basis of almost identical or similar allegations in FIR and complaint case as well.

At the time of issuance of notice of motion on 9.5.2005, the proceedings fixed before the Fast Track Court for an offence under Section 307 IPC were stayed. Counsel for the petitioners was given liberty to move an application for clubbing the cases in accordance with law.

Mr.Sandhawalia, learned counsel representing the petitioner, has drawn my attention to order Annexure P-10 passed by the Sessions Judge, Jalandhar (in CRR No.2221 of 2005) directing that the State case titled State vs. Prem Singh and others and State vs. Mandeep Arora and others, be transferred to the Court of I.S.Bajwa, Addl.Sessions Judge (Adhoc) Jalandhar, after withdrawing from the Court of Kanwaljit Singh, Judicial Magistrate Ist Class, Jalandhar. Parties were accordingly directed to appear before the Court where the cases were fixed for further proceedings.

Mr.Sandhawalia further says that this would not satisfy the requirement of Section 210 Cr.P.C. Besides referring to the direction given by this Court for clubbing of the cases vide order dated 9.5.2005, counsel also refer to Section 210(2) Cr.P.C. to say that when complaint and FIR cases are to be tried by a Magistrate

then both the cases are required to be treated to have been instituted on a police report. The counsel also draws my attention to observations made in the case of **Sankaran Moitra vs. Sadhna Das and another, 2006 (4) SC 584** with regard to the purpose of Section 210 Cr.P.C. In this regard the Hon'ble Supreme Court has observed as under:-

(i) it is intended to ensure that private complaints do not interfere with the course of justice:

(ii) it prevents harassment to the accused twice; and

(iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once.

Reference can also be made to the observations of the Joint Committee of Parliament in this regard, which is as under:-

> “It has been brought to the notice of the Committee that sometimes when a serious case is under investigation by the police, some of the persons file complaint and quickly get an order of acquittal either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report (under Section 173) is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if

no such case is received the Magistrate would be free to dispose of the complaint case. This new provision is intended to secure that private complainants do not interfere with the course of justice."

It has been emphasised by the Hon'ble Supreme Court that this new provision is intended to secure that private complaint do not interfere with the cause of justice. The prayer accordingly is that the complaint and the FIR case should be directed to be clubbed together and tried as is the provisions of Section 210(2) Cr.P.C.

Learned counsel representing the respondents, has no objection to the course as advocated by the learned counsel for the petitioner. Accordingly, the present petitions are allowed to the extent that the cases arising out of the FIR and the complaint that are pending before the Fast Track Court be clubbed together and tried accordingly as is the purview of Section 210 Cr.P.C. Needless to mention that cross cases would also be tried with the present cases being clubbed.

Petitions shall stand disposed of in the above noted terms.

(RANJIT SINGH)
JUDGE

December 17, 2007
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